IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE EIGHTH DAY OF AUGUST
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION No. 12372 of 2003

Between:

G.Simhadri and 82 others

..... PETITIONERS

AND

The Registrar, Andhra University,

Waltair and another

.....RESPONDENTS

WRIT PETITION No. 19672 of 1999

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Between:

Vaka Raghava Reddy

…PETITIONER

And:

Andhra University, rep.by

Its Registrar, Waltair and 2 others

….RESPONDENTS

WRIT PETITION No. 19673 of 1999

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Between:

B.D.J.N.R.Prasad and 16 others

…PETITIONERS

And:

Andhra University, rep.by its

Registrar, Waltair and 2 others

….RESPONDENTS

WRIT PETITION No. 4876 of 2003

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Between:

G.V.Narasimha Murthy and 15 others

…PETITIONERS

And:

The Registrar, Andhra University,

Waltair and 2 others

….RESPONDENTS

WRIT PETITION No. 24750 of 2003

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Between:

T.Ravi Kumar and 17 others

…. PETITIONERS

And:

Government of A.P.,Education Department,

Secretariat, Hyderabad, rep.by

Its Secretary and 2 others

…. RESPONDENTS

WRIT PETITION No. 18549 of 1999

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Between:

T.Ravi Kumar and 17 others

…PETITIONERS

And:

Government of A.P.Education Department,

Secretariat, Hyderabad, rep.by

Its Secretary and 2 others

….RESPONDENTS

WRIT PETITION No. 19756 of 1999

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Between:

G.Venkatarao and 6 others

….PETITIONERS

And:

Andhra University rep.by its Registrar,

Waltair and 2 others

….RESPONDENTS

COMMON ORDER:

W.P.Nos.12372/2003, 19672/1999, 19673/1999, 4876/2003, 18549/1999 and 19756/1999 are filed by the respective petitioners, seeking a direction to the respondents to regularize their services in their respective categories from the date of initial appointments with all consequential and attendant benefits including arrears of back wages. W.P.No.24750/2003 is filed against the proceedings No.S.III(a)/7886/2003, dated 15.06.2003, issued by the 3rd respondent therein in regard to separation of hostel administration from university administration.

The facts in all writ petitions, be summarized in brief, as follows:

The petitioners in all the writ petitions are working in different categories in the respondent Hostel since a decade ago on daily wages. It is stated that they have been appointed against regular clear vacancies, but their services have not been regularized by the respondent University. They are depriving of regular pay scale and the consequential benefits flow from regularization. They have been continuously working in the respondent hostel till now. It is further stated that the respondents are trying to take hasty and unilateral decisions to terminate the services of the petitioners. Hence the petitioners are constrained to file these writ petitions.

The respondents filed detailed counter affidavits in all the writ petitions alleging that the petitioners are working purely on temporary basis and their posts are not sanctioned posts. The Government alone is competent to sanction the regular scale of pay posts, and the University has no power to create any such posts. The petitioners have no right to claim regular appointment. Hostel facilities were provided to the students by meeting the expenditure on the persons engaged by the Warden/Special Officer to maintain the Hostel Messes from the Students' Mess Bills as the messes are managed by the students themselves from 01.12.1992. The

University cannot take its own decision without any permission from the State Government for sanction of posts as per the University Act, as the Government has to sanction financial grants to University for payment of salaries to its staff. It is also stated that there is no direct employer-employee relationship between the petitioners and respondent University.

Heard the learned counsel on either side.

In all these matters, the issue involved is for regularization of services of the petitioners in the category of posts in which they are working. The learned counsel appearing for the petitioners contends that the petitioners have been working in the respondent University since a long time and that their services have to be regularized. It is also brought to the notice of this Court that the University has taken a decision in the year 1999 in addressing a letter to the Government for creating posts of daily wages so as to meet the requirements of the students.

On the other hand, the learned counsel appearing for the respondent University contends that since a policy decision has been taken by the respondent University in entrusting the hostels to the committees and the committees will run the hostels, in the absence of any sanctioned post, the question of regularization does not arise. The learned counsel also contends that under Section 49 of the A.P.Universities Act, 1991, the creation of posts can be done only by the Government. The learned counsel for the respondent-University also make it clear that as and when the work is there, the services of the petitioners will be engaged by the committee.

In W.P.Nos.19672/1999 and 19673/1999, it is the case of the petitioners that the respondent University has sent proposals for sanction of posts in the year 1999, and the Government has not taken any decision thereon. The respondent University in its counter clearly stated that the proposals sent by the university have been rejected vide letter No.26106/UE.I-I/1999, dated 30.03.2000 in view of the fact that there is a ban on appointment of daily wages. That memo has not been challenged by the petitioners till today.

The learned counsel for the petitioners in W.P.No.18549/1999 submitted that the petitioners have been taken away the record bundles.

There cannot be any dispute that unless a sanctioned post is available, the question of regularization does not arise. Admittedly, there are no sanctioned posts

of various categories. Under Section 49 of the A.P.Universities Act, 1991, the University shall not create any post resulting in a recurring liability on the Government either immediately or in future. So the Government is competent authority to create posts and that aspect is not in dispute. Therefore, the question of regularization of the petitioners does not arise in the absence of any sanctioned posts.

Considering the fact that the petitioners have been working since a long time in the hostels of the respondent University, their interests have to be safeguarded and protected, at the same time, not causing any financial loss to the respondent University. The present stand of the respondent university is that the hostel administration is separated from university administration as per the proceedings of the Executive Council No.S.III(9)/7886/2003, dated 15.06.2003 with effect from 16.06.2003 and it is for the members of the Executive Council to take appropriate decision as to whether the petitioners are continued or not.

The learned counsel placed a strong reliance on a decision of the Apex Court i n ***G.B.Pant University of Agriculture & Technology v. State of U.P.*** for the proposition that financial difficulties could not justify taking of a view to the contrary where under two conventional tests of implicit obligation and overall control and supervision applied to determine the issue. There is a decision where a Labour Court granted award to the employees and the apex court has directed respondents therein to regularize the services of the employees in terms of the award. The approach of the apex court does not indicate that even in the absence of sanctioned post the services of a person can be regularized.

The learned counsel for the petitioner also relied upon a decision in ***Syed Meera vs. The Government of A.P.***, wherein it is held that the respondents therein have an obligation to regularize the services of the petitioners therein.

The learned counsel for the petitioner further relied upon a decision in ***Madhyamik Shiksha Parishad v. Anil Kumar Mishra*** wherein it is held:

> "We are unable to uphold the order of the High Court. There were no sanctioned posts in existence to which they could be said to have been appointed. The assignment was an *ad hoc* one which anticipatedly spent itself out."

In a recent decision in ***Haldia Refinery Canteen Employees Union v. Indian Oil***

Corporation Limited wherein it is held:

> "In *Indian Petrochemicals Corpn.Ltd.* this Court after analyzing the earlier judgments on the same point has held that the workmen working in the canteen become the workers of the establishment for the purposes of the Factories Act only and not for any other purpose. They do not become the employees of the management for any other purpose entitling them to absorption into the service of the principal employer. Factors which persuaded this Court in *Indian Petrochemicals Corpn.Ltd.* case to take the view that the workmen in that case were employees of the management are missing in the present case. No power vests in the management either to make the appointment or to take disciplinary action against the erring workmen and their dismissal or removal from service. The management is not reimbursing to the contractor the wages of the workmen. On these facts, it cannot be concluded that the contractor was nothing but an agent or a manager of the respondent working completely under the supervision and control of the management."

Therefore, in the absence of any sanctioned post, the question of regularization of the petitioners does not arise. The specific stand taken by the respondent University is that whenever regular employee is goes on leave the petitioners are being appointed as a staff gap arrangement in the leave vacancy. But the case of the petitioners is that they have been continuously working in the hostels not in the leave vacancy, but due to the perennial nature of work, which is available. Therefore, the question of regularization does not arise.

For the foregoing reasons, all the writ petitions are devoid of merit and accordingly, they are dismissed. The interim orders, if any, shall stand vacated. No order as to costs.

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K.C. BHANU,J

Dated: 08.08.2005

Dsr

Note:

Issue CC in one week

B/o

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